IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 17980 of 2004

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Between:

V.Dhananjaya Naidu, s/o Venkata Subba Naidu,
r/o Velmapalem, Venkatagiri Mandal, Nellore District.

..... PETITIONER

AND

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1 The Divisional Forest officer (Authorised Officer) Flying

Squad, Nirmal, Adilabad District.
2 The Forest Range Officer, Flying Squad Division, Nirmal,

Adilabad District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of certiorari or any other appropriate writ or direction calling for the records relating to the orders passed in CMA No.7 of 2002 dated 23-4-2004 on the file of the II Addl. District Judge (FTC) Adilabad and the orders passed by the Ist respondent in offence No.168/OR/FSNRL dated 3-10-2001 and quash the above orders as illegal and arbitrary.

Counsel for the Petitioner: MR.P.GANGA RAMI REDDY

Counsel for Respondents: GP FOR FORESTS

Court at the admission stage made the following:

ORDER:

Petitioner invokes the Certiorari jurisdiction of this Court to call for records relating to

the order passed in CMA No.7 of 2002 dated 23-4-2004 on the file of the II Additional District Judge (FTC) Adilabad in dismissing the appeal by confirming the confiscation order passed by the first respondent in offence No.168/OR/FSNRL dated 3-10-2001 and for quashing the same.

The petitioner's lorry bearing No.AP-21-U-4929 along with Red sanders comprising 187 round logs measuring 5650 Kgs. valued Rs.4,52,000/- was seized by the Forest officials, flying squad party, Nirmal on 16-9-2000 and accordingly a case was registered under Section 44(2) of the Andhra Pradesh Forest Act, 1967 (for short 'the Act') by the Forest Range Officer in report No.21/35 dated
16-2-2000. The Forest Range Officer issued notice dated 19-4-2000 under Section 44 (2)(b) of the Act to the petitioner to show cause as to why the Lorry together with the timber should not be confiscated to the Government, and after giving an opportunity to the petitioner ordered for confiscation of the lorry. Aggrieved by the same, the petitioner carried the matter in appeal in CMA No.7 of 2002 before the District Judge (FTC) Adilabad, which was dismissed by order dated 23-4-2004 confirming the confiscation order. The legality and validity of the said order is challenged in this writ petition.

Learned counsel for the petitioner contends that the petitioner, who is the owner of the lorry, has not accompanied the lorry and he has no knowledge of the carrying of Red sanders by the driver and cleaner. In view of the same, order of confiscation of the lorry and as confirmed by the District Judge in appeal are contrary to law as affirmed by the Division Bench of this court in **Sub-Divisional Forest Officer, Chennur V. Vijay B. Gulati**. He also submits that after the order of confiscation the petitioner furnished bank guarantee and got the vehicle released. In view of conformation of the confiscation order, the authorities are now proceeding to encash the bank guarantee. In appeal, the learned District Judge, has not properly appreciated the matter and erred in accepting the evidence of the driver and cleaner and confirming of the order of confiscation is liable to be set aside.

On issuance of notice, Sri Rangaiah-A5, who is the another cleaner of the lorry, stated that on the instructions of the petitioner Red sanders were being transported to Delhi. He further stated that the petitioner phoned to Sri Apparao, Mechanic and conveyed him to pay Rs.5000/- to him and asked him to go to Hyderabad and hand over to Sri P. Nanda, who is traveling in the Lorry. Accordingly he collected the amount and went to Hyderabad and paid the money to P. Nanda. The Driver

Mastanaiah and Cleaner Nanda asked him to travel along with them. Accordingly he agreed and accompanied them in traveling. In the way he came to know that owner has loaded Red sanders in the lorry at Kukkal Doddi village and transporting the same to Delhi. While coming from Kukkal Doddi the lorry along with driver and cleaner were detained at Pullampet Forest Check Post and later they have paid Rs.15,000/- to the forest officials and got the lorry released and proceeded to Delhi. Since all the amount with them was paid at check post the matter was informed to the owner, who sent Rs.5000/- to them to meet the expenditure.

The statement of A5 was supported by the statement of Masthanaiah-A2, who was the driver of the lorry, stated that they have loaded Red sanders into lorry and covered with gunny bags and tide up with tarpaulin. The owner of the lorry asked him to take the lorry along with Sri Nanda, cleaner and the owner also accompanied in the other vehicle up to 30 Km. When they reached Pullampet Forest Check Post, the forest officials detected the Red sanders and detained the lorry, but the cleaner managed the check post officers and got released the lorry. At Erragundla village cleaner telephoned to owner and informed the matter and requested him to send money to Hyderabad. Sending of money was also admitted by the owner but stated that the said amount is sent for the purpose of repairs of the lorry. All these evidences clearly show that the transportation was with the knowledge of the petitioner and who also accompanied in another vehicle up to the distance of 30Kms. For the above reasons, the competent authority ordered confiscation of the lorry, and in the appeal the District Judge after reanalyzing the evidence available on record confirmed the order of confiscation.

Having regard to the facts and circumstances of the case, the reliance placed by the learned counsel for the petitioner is not applicable to the facts of the present case. Except ipsi dixit of the petitioner, no other evidence was produced by him showing that the transportation of Red sanders is not in his knowledge. In view of the same, no infirmity is discernible in the confiscation order passed by the competent authority as confirmed by the appellate authority.

Accordingly, the Writ Petition is dismissed at the admission stage.

A. Gopal Reddy, J.

6th October, 2004.

Js.

ASSISTANT REGISTRAR

To

1 The Divisional Forest officer (Authorised Officer) Flying

Squad, Nirmal, Adilabad District.
2 The Forest Range Officer, Flying Squad Division, Nirmal,

Adilabad District.

3 2 CCs to G.P. for Forests, High Court Buildings, Hyderabad.

4 2 CD copies.